

## Maine Revised Statutes

### Title 22: HEALTH AND WELFARE

#### Chapter 103-A: CERTIFICATE OF NEED HEADING: PL 2001, c. 664, §2 (new)

#### §328. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [2001, c. 664, §2 (NEW).]

**1. Access to care.** "Access to care" means the ability to obtain in a timely manner needed personal health services to achieve the best possible health outcomes balanced by the health system's resource limitations. Access to care may be influenced by many factors, including, without limitation, travel, distance, waiting time, available resources, availability of a source of care and the health status of the population served.

[ 2001, c. 664, §2 (NEW) . ]

**2. Ambulatory surgical facility.** "Ambulatory surgical facility" means a facility, not part of a hospital, that provides surgical treatment to patients not requiring hospitalization. "Ambulatory surgical facility" does not include the offices of private physicians or dentists, whether in individual or group practice.

[ 2001, c. 664, §2 (NEW) . ]

**3. Capital expenditure.** "Capital expenditure" means an expenditure, including a force account expenditure or predevelopment activities, that under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance and, for the purposes of this chapter, includes capitalized interest on borrowed funds and the fair market value of any property or equipment that is acquired under lease or comparable arrangement or by donation.

[ 2001, c. 664, §2 (NEW) . ]

#### **3-A. Capital investment fund.**

[ 2011, c. 213, §2 (RP) . ]

**4. Construction.** "Construction," when used in connection with "health care facility," means the establishment, erection, building, purchase or other acquisition of a health care facility.

[ 2001, c. 664, §2 (NEW) . ]

**5. Development.** "Development," when used in connection with health service, means the undertaking of those activities that on their completion will result in the offering of a new health service to the public.

[ 2001, c. 664, §2 (NEW) . ]

**6. Expenditure minimum for annual operating costs.** "Expenditure minimum for annual operating costs" means, for services commenced after October 1, 1998, \$400,000 for the 3rd fiscal year, including a partial first year.

[ 2001, c. 664, §2 (NEW) . ]

**7. Generally accepted accounting principles.** "Generally accepted accounting principles" means accounting principles approved by the American Institute of Certified Public Accountants or a successor organization.

[ 2001, c. 664, §2 (NEW) .]

**8. Health care facility.** "Health care facility" means a hospital, psychiatric hospital, nursing facility, kidney disease treatment center including a freestanding hemodialysis facility, rehabilitation facility, ambulatory surgical facility, independent radiological service center, independent cardiac catheterization center or cancer treatment center. "Health care facility" does not include the office of a private health care practitioner, as defined in Title 24, section 2502, subsection 1-A, whether in individual or group practice. In an ambulatory surgical facility that functions also as the office of a health care practitioner, the following portions of the ambulatory surgical facility are considered to be a health care facility:

- A. Operating rooms; [2003, c. 469, Pt. C, §3 (NEW).]
- B. Recovery rooms; [2003, c. 469, Pt. C, §3 (NEW).]
- C. Waiting areas for ambulatory surgical facility patients; [2009, c. 383, §1 (AMD).]
- C-1. Any space with major medical equipment; and [2009, c. 383, §2 (NEW).]
- D. Any other space used primarily to support the activities of the ambulatory surgical facility. [2003, c. 469, Pt. C, §3 (NEW).]

[ 2009, c. 383, §§1, 2 (AMD) .]

**9. Health maintenance organization.** "Health maintenance organization" means a public or private organization that:

- A. Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health services: usual physician services, hospitalization services, laboratory services, x-ray services, emergency and preventive health services and out-of-area coverage; [2001, c. 664, §2 (NEW).]
- B. Is compensated, except for copayments, for the provision of the basic health services to enrolled participants on a predetermined periodic rate basis; and [2001, c. 664, §2 (NEW).]
- C. Provides physicians' services primarily through physicians who are either employees or partners of the organization or through arrangements with individual physicians or one or more groups of physicians. [2001, c. 664, §2 (NEW).]

[ 2001, c. 664, §2 (NEW) .]

**10. Health need.** "Health need" means a situation or a condition of a person, expressed in health outcome measures such as mortality, morbidity or disability, that is considered undesirable and is likely to exist in the future.

[ 2001, c. 664, §2 (NEW) .]

**11. Health planning.** "Health planning" means data assembly and analysis, goal determination and the formulation of action recommendations regarding health services.

[ 2001, c. 664, §2 (NEW) .]

**12. Health services.** "Health services" means clinically related services that are diagnostic, treatment, rehabilitative services or nursing services provided by a nursing facility. "Health services" includes alcohol abuse, drug abuse and mental health services.

[ 2001, c. 664, §2 (NEW) . ]

**13. Health status.** "Health status" means patient or population measures, or both, of good and poor health practices, rates of death and disease, both chronic and infectious, and the prevalence of symptoms or conditions, or both, of illness and wellness.

[ 2001, c. 664, §2 (NEW) . ]

**14. Hospital.** "Hospital" means an institution that primarily provides to inpatients, by or under the supervision of physicians, diagnostic services and therapeutic services for medical diagnosis, treatment and care of injured, disabled or sick persons or rehabilitation services for the rehabilitation of injured, disabled or sick persons. "Hospital" also includes psychiatric and tuberculosis hospitals.

[ 2001, c. 664, §2 (NEW) . ]

**15. Hospital swing bed.** "Hospital swing bed" means an acute care bed licensed by the Bureau of Medical Services, Division of Licensing and Regulatory Services for the use also as a nursing care bed. Swing beds may be established only in rural hospitals with fewer than 100 licensed acute care beds.

[ 2001, c. 664, §2 (NEW); 2007, c. 324, §17 (REV) . ]

**16. Major medical equipment.** "Major medical equipment" means a single unit of medical equipment or a single system of components with related functions used to provide medical and other health services that costs \$3,200,000 or more. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and has been determined to meet the requirements of the United States Social Security Act, Title XVIII, Section 1861(s), paragraphs 10 and 11. In determining whether medical equipment costs more than the threshold provided in this subsection, the cost of studies, surveys, designs, plans, working drawings, specifications and other activities essential to acquiring the equipment must be included. If the equipment is acquired for less than fair market value, the term "cost" includes the fair market value. Beginning January 1, 2013 and annually thereafter, the threshold amount for review must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

[ 2011, c. 424, Pt. A, §1 (AMD); 2011, c. 424, Pt. E, §1 (AFF) . ]

**17. Modification.** "Modification" means the alteration, improvement, expansion, extension, renovation or replacement of a health care facility or health maintenance organization or portions thereof, including the initial equipment, and the replacement of equipment or existing buildings.

[ 2001, c. 664, §2 (NEW) . ]

**17-A. New health service.** "New health service" means:

A. The obligation of any capital expenditures by or on behalf of a new or existing health care facility of \$3,000,000 or more that is associated with the addition of a health service that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered; [ 2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF) . ]

B. The addition of a health service that is to be offered by or on behalf of a new or existing health care facility that was not offered on a regular basis by or on behalf of the health care facility within the 12-month period prior to the time the services would be offered and that, for the 3rd fiscal year of operation, including a partial first year following addition of that service, is projected to entail incremental annual operating costs directly attributable to the addition of that health service of at least \$1,000,000. For the purposes of this paragraph, the compensation attributable to the health care practitioner is not included in the calculation of 3rd-year operating costs; or [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

C. The addition in the private office of a health care practitioner, as defined in Title 24, section 2502, subsection 1-A, of new technology that costs \$3,200,000 or more. The department shall consult with the Maine Quality Forum Advisory Council established pursuant to Title 24-A, section 6952, prior to determining whether a project qualifies as a new technology in the office of a private practitioner. With regard to the private office of a health care practitioner, "new health service" does not include the location of a new practitioner in a geographic area. [2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF).]

Beginning January 1, 2013 and annually thereafter, the threshold amounts for review in paragraphs A, B and C must be updated by the commissioner to reflect the change in the United States Department of Labor, Bureau of Labor Statistics Consumer Price Index medical care services index, with an effective date of January 1st each year.

"New health service" does not include a health care facility that extends a current service within the defined primary service area of the health care facility by purchasing within a 12-month time period new equipment costing in the aggregate less than the threshold provided in subsection 16;

[ 2011, c. 424, Pt. A, §2 (AMD); 2011, c. 424, Pt. E, §1 (AFF) .]

**18. Nursing facility.** "Nursing facility" means any facility defined under section 1812-A.

[ 2001, c. 664, §2 (NEW) .]

**18-A. Nursing facility MaineCare funding pool.** "Nursing facility MaineCare funding pool" means that limit established in accordance with section 333-A for nursing facility projects.

[ 2007, c. 440, §1 (NEW) .]

**19. Obligation.** An "obligation" for a capital expenditure that is considered to be incurred by or on behalf of a health care facility:

A. When a contract, enforceable under the law of the State, is entered into by or on behalf of the health care facility for the construction, acquisition, lease or financing of a capital asset; [2001, c. 664, §2 (NEW) .]

B. When the governing board of the health care facility takes formal action to commit its own funds for a construction project undertaken by the health care facility as its own contractor; or [2001, c. 664, §2 (NEW) .]

C. In the case of donated property, on the date on which the gift is completed under the applicable law of the State. [2001, c. 664, §2 (NEW) .]

[ 2001, c. 664, §2 (NEW) .]

**20. Offer.** "Offer," when used in connection with "health services," means that the health care facility or health maintenance organization holds itself out as capable of providing or having the means to provide a health service.

[ 2001, c. 664, §2 (NEW) .]

**21. Person.** "Person" means an individual; trust or estate; partnership; corporation, including associations, joint stock companies and insurance companies; the State or a political subdivision or instrumentality of the State, including a municipal corporation of the State; or any other legal entity recognized by state law.

[ 2001, c. 664, §2 (NEW) .]

**22. Person directly affected by a review.** "Person directly affected by a review" includes:

A. The applicant; [2001, c. 664, §2 (NEW) .]

B. A group of 5 persons residing or located within the health service area served or to be served by the applicant; [2011, c. 648, §1 (AMD) .]

C. A health care facility, a health maintenance organization or a health care practitioner that demonstrates that it provides similar services or, by timely filing a letter of intent with the department for inclusion in the record, indicates an intention to provide similar services in the future to patients residing in the health service area and whose services would be directly and substantially affected by the application under review; [2001, c. 664, §2 (NEW) .]

D. A 3rd-party payor, including, without limitation, a health maintenance organization, that pays health care facilities for services in the health service area in which the project is proposed to be located and whose payments would be directly and substantially affected by the application under review; and [2001, c. 664, §2 (NEW) .]

E. A person who demonstrates a direct and substantial effect upon that person's health care as a result of the application under review. [2001, c. 664, §2 (NEW) .]

[ 2011, c. 648, §1 (AMD) .]

**23. Predevelopment activity.** "Predevelopment activity" means any appropriately capitalized expenditure by or on behalf of a health care facility made in preparation for the offering or development of a new health service for which a certificate of need would be required and arrangements or commitments made for financing the offering or development of the new health service and includes site acquisitions, surveys, studies, expenditures for architectural designs, plans, working drawings and specifications.

[ 2001, c. 664, §2 (NEW) .]

**24. Project.** "Project" means any acquisition, capital expenditure, new health service or change in a health service, predevelopment activity or other activity that requires a certificate of need under section 329.

[ 2001, c. 664, §2 (NEW) .]

**25. Rehabilitation facility.** "Rehabilitation facility" means an inpatient facility that is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical services and other services that are provided under competent professional supervision.

[ 2001, c. 664, §2 (NEW) .]

**26. Replacement equipment.** "Replacement equipment" means a piece of capital equipment that replaces another piece of capital equipment that performs essentially the same functions as the replaced equipment.

[ 2001, c. 664, §2 (NEW) .]

**27. State Health Plan.**

[ 2011, c. 90, Pt. J, §3 (RP) .]

## SECTION HISTORY

2001, c. 664, §2 (NEW). RR 2003, c. 1, §15 (COR). 2003, c. 469, §§C2-6 (AMD). 2007, c. 324, §17 (REV). 2007, c. 440, §1 (AMD). 2007, c. 681, §§1, 2 (AMD). 2009, c. 383, §§1-4 (AMD). 2011, c. 90, Pt. J, §§2, 3 (AMD). 2011, c. 213, §2 (AMD). 2011, c. 424, Pt. A, §§1, 2 (AMD). 2011, c. 424, Pt. E, §1 (AFF). 2011, c. 648, §1 (AMD).

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